

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**PRESTON POPE,**

**Defendant.**

**8:16CR59**

**MEMORANDUM AND ORDER**

The matter before the Court is the Defendant's Motion for New Trial, ECF No. 164. The Defendant, Preston Pope, states that the Court should have declared a mistrial following voir dire, because of statements made by a prospective juror, Chad Dolezal.

While Mr. Dolezal said his mother was related to a family by the name of Pope, and he thought all people in Omaha with the name Pope were related, he also said he did not know the Defendant Preston Pope nor did he know how the Defendant might be related to any members of the Pope family with whom he was acquainted. Later, in response to a question about whether any members of the jury panel had relatives who had been involved with the criminal justice system, Mr. Dolezal stated that one branch of his family had been in trouble with the law. He did not identify that branch of his family.

Under Fed. R. Crim. P. 33, the Court may order a new trial "if the interest of justice so requires." The Defendant acknowledges that he bears the burden of proving that a new trial should be granted. See, *e.g.*, *Adams v. United States ex rel. McCann*, 317 U.S. 269, 281 (1942) ("If the result of the adjudicatory process is not to be set at

naught, it is not asking too much that the burden of showing essential unfairness be sustained by him who claims such injustice and seeks to have the result set aside, and that it be sustained not as a matter of speculation but as a demonstrable reality.”)

The Defendant asks that Court to speculate that the jury was unfairly prejudiced by the comments of Mr. Dolezal during the voir dire process. Viewing the record as a whole, the Court concludes that such speculation is unjustified and a new trial would not be in the interest of justice. Accordingly,

IT IS ORDERED:

The Defendant Preston Pope’s Motion for New Trial, ECF No. 164, is denied.

DATED this 4<sup>th</sup> day of December, 2017.

BY THE COURT:

s/Laurie Smith Camp  
Chief United States District Judge